

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
BHS (NEW YORK) CORPORATION,

Plaintiff,

v.

IBRAHIMA DIENE,

Defendant.  
\_\_\_\_\_

X

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08 Civ. 00179 (LAK)

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**DECLARATION  
IN SUPPORT**

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**AMOS ALTER** declares:

1. I am Of Counsel to Troutman Sanders LLP, attorneys for plaintiff.

I make this Declaration in support of plaintiff's motion for an Order declaring defendant in default for failure to appear and answer, and for reference of the case to a Magistrate Judge for the purpose of conducting an inquest and entering judgment against defendant.

2. A copy of the complaint is annexed hereto as Exhibit "A". A copy of the Order of this Court (Kaplan, D.J.), authorizing service of the summons by publication, is annexed hereto as Exhibit "B". Copies of the affidavits of service by publication in conformity with the Order are annexed hereto as Exhibits "C" and "D".

3. Defendant is in default for failure to appear and answer. A copy of the Clerk's Certificate noting the default, which includes a copy of the docket sheet, is annexed hereto as Exhibit "E". The original of the Clerk's Certificate has heretofore been delivered to and is in the possession of Andrew Mohan, Courtroom Deputy to Judge Kaplan.

4. This motion is not being served on defendant, as his whereabouts are unknown, which is why this Court authorized service of the summons by publication.

5. No prior application for the same or similar relief has been made.

6. The relief prayed for should therefore be granted.

7. I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on July 9, 2008.

  
\_\_\_\_\_  
Amos Alter

# EXHIBIT “A”

JUDGE KAPLAN  
08 CV 00179

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
BHS (NEW YORK) CORPORATION,

Plaintiff,

v.

IBRAHIMA DIENE,

Defendant.  
\_\_\_\_\_

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Plaintiff, by its attorneys, Troutman Sanders LLP, for its complaint,

alleges:

**Jurisdiction and Venue**

1. Plaintiff is a New York corporation, with its principal place of business in New York.
2. Upon information and belief, defendant is a citizen of Senegal, residing in New Jersey.
3. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.
4. A substantial part of the events or omissions giving rise to the claim occurred in the Southern District of New York.
5. Jurisdiction is afforded by 28 U.S.C. § 1332(a)(2). Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(2).

**General Allegations**

6. Plaintiff is a wholly-owned subsidiary of Banque de l'Habitat du Senegal, a Senegalese bank. Plaintiff is licensed and engaged in the business of money transmitting, primarily between the United States and Senegal.

7. At all times here relevant, defendant was employed as the Manager of plaintiff's New York office, and was Vice-President and Secretary of plaintiff.

8. During his tenure, and prior to December 31, 2005, defendant wrongfully converted \$508,814 of plaintiff's funds to his own use, no part of which has been repaid, despite due demand.

**First Claim for Relief**

9. Defendant owes plaintiff \$508,814, with interest from December 31, 2005, for conversion.

**Second Claim for Relief**

10. Defendant owes plaintiff \$508,814, with interest from December 31, 2005, for breach of the fiduciary duty he owed to plaintiff.

**Third Claim for Relief**

11. Defendant owes plaintiff \$508,814, with interest from December 31, 2005, for breach of his duty of good faith and loyalty as an employee.

**WHEREFORE, plaintiff demands judgment against defendant, in the sum of \$508,814, with interest from December 31, 2005, together with the costs and disbursements of this action.**

**TROUTMAN SANDERS LLP**

By: 

**Amos Alter**

**Attorneys for Plaintiff  
The Chrysler Building  
405 Lexington Avenue  
New York, NY 10174  
212-704-6000**

# EXHIBIT “B”

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: <u>7/2/08</u>

\_\_\_\_\_  
BHS (NEW YORK) CORPORATION,

Plaintiff,

v.

IBRAHIMA DIENE,

\_\_\_\_\_  
Defendant.

: 08 Civ. 00179 (LAK)

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: **ORDER**

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Upon the accompanying declaration with exhibits of Amos Alter, dated March 11, 2008; it appearing that plaintiff has been unable to serve defendant with the summons and complaint because he has moved from his last known address and his current address is unknown; and it further appearing that defendant cannot with due diligence be served by another prescribed method; It is

**ORDERED**, that:


1. The summons in this action may be served upon defendant by publication pursuant to Fed. R. Civ. P. Rule 4(e) and New York CPLR 316, as set forth below.

2. The summons, together with a notice to defendant, containing a brief statement of the nature of the action, and the relief sought, shall be published in two newspapers, at least one in the English language, namely

The New York Times, published in New York, New York, and  
The New York Daily News, published in New York, New York, both most likely to give notice to defendant, once in each of four successive weeks.

3. The first publication shall be made within thirty days after this Order is granted.

Dated: New York, New York  
4/3, 2008

  
Hon. Lewis A. Kaplan, U.S.D.J.

# EXHIBIT “C”

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
BHS (NEW YORK) CORPORATION,

Plaintiff,

v.

IBRAHIMA DIENE,

Defendant.  
\_\_\_\_\_

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08 Civ. 00179 (LAK)

**SUMMONS WITH  
AFFIDAVIT OF SERVICE  
BY PUBLICATION**

**STATE OF NEW JERSEY**  
**COUNTY OF HUDSON**

**GAIETY CABALLERO** being duly sworn, says she is a principal clerk and a duly authorized designee of Daily News, L.P., publisher of the 'DAILY NEWS,' a daily and Sunday newspaper published in the City of New York and that the notice, of which the annexed is a copy, was published in said newspaper and online within the section of:

**LEGAL NOTICES of the  
CITY NORTH Edition**

On April 17, 24;

May 17 8, 2008

Samir Ghalib

(Representative's signature)  
Authorized Designee of Daily News, L.P.,  
Publisher of the Daily News

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK  
DOE (NEW YORK) COMPLAINT,  
CRIMINAL DIVISION  
CRIMINAL NO. 100,000,000  
SUBPOENA IN A CIVIL CASE  
Case No. 100,000,000 CV 0000  
JUDGE KAPLAN  
Re: Inclusive Dates, 000-00-0000  
From: JUDGE JOHN J. KAPLAN  
To: MR. JAMES J. HARRIS  
and Counsel for the above named  
TIPPI ATTORNEY, Trustee: Bank  
of America, N.A., 100 Wall Street,  
New York, New York, NY  
10005, to appear in the captioned  
cause, to be held at the Courtroom  
within twenty days after the service  
of this subpoena upon you, pursuant  
to the duty of service. If you fail to  
do so, judgment by default will be taken  
against you, and you will be liable  
for the amount. You must also  
bring with you the Clerk of the  
Court within a reasonable period after  
the date of this subpoena.  
J. MICHAEL MORGAN, Clerk, U.S.  
District Court (Northern) Eastern  
District, New York, NY  
NATURE OF ACTION: In this  
divorcement action, Plaintiff seeks to recover  
from defendant, \$100,000, with interest  
and costs, and to have the Court enter  
an order of maintenance, support of Plaintiff  
and her children, and a decree of divorce  
and breach of duty of good faith  
and tender as to children.  
TROTTER SANDERS LLP, Attorneys  
for Plaintiff, The Chrysler  
Building, 400 Lexington Avenue, New York,  
NY 10017, 212-512-1234

Sworn to before me this  
12 day of July 2008

Michelle Sweeney  
Public Notary

**MICHELLE SWEENEY**  
**NOTARY PUBLIC OF NEW JERSEY**  
 My Commission Expires May 10, 2011  
 I.D. No. 2275207

# EXHIBIT “D”



SEC. C4 PG 2

CERTIFICATION OF PUBLICATION

APR 21 2008 20

I, Alice Weber, in my capacity as a Principal Clerk of the Publisher of The New York Times a daily newspaper of general circulation printed and published in the City, County and State of New York, hereby certify that the advertisement annexed hereto was published in the editions of The New York Times on the following date or dates, to wit on

APR 20 2008 20

Approved:

Maria Pennullo

THIS CERTIFICATION  
NOT VALID  
WITHOUT NYT RASER SEAL



SEC. *NT* PG 7

CERTIFICATION OF PUBLICATION



I, *Alice Weber*, in my capacity as a Principal Clerk  
of the Publisher of *The New York Times* a daily newspaper of general  
circulation printed and published in the City, County and State of New  
York, hereby certify that the advertisement annexed hereto was published  
in the editions of *The New York Times* on the following date or dates,  
to wit on

*JUN 05 2008* 20

*APR 20 2008* 20

*Alice Weber*

Approved:

*Maria Pannullo*

THIS CERTIFICATION  
NOT VALID  
WITHOUT NYT RASSED SEAL



SEC. Cy PG 6

**CERTIFICATION OF PUBLICATION**

MAY 01 2008 20

I, Alice Waba, in my capacity as a Principal Clerk of the Publisher of The New York Times a daily newspaper of general circulation printed and published in the City, County and State of New York, hereby certify that the advertisement annexed hereto was published in the editions of The New York Times on the following date or dates to wit on

APR 27 2008 20

Allen Weber

Approved:

Mario Pennullo

THIS CERTIFICATION  
NOT VALID  
WITHOUT NYT DATED SIGN



**The New York Times**

620 8TH AVENUE • NEW YORK, NY 10018

SEC. *NJ* PG 23

**CERTIFICATION OF PUBLICATION**

MAY 01 2008 20

I, Alice Weber, in my capacity as a Principal Clerk  
of the Publisher of The New York Times a daily newspaper of general  
circulation printed and published in the City, County and State of New  
York, hereby certify that the advertisement annexed hereto was published  
in the editions of The New York Times on the following date or dates,  
to wit on

APR 27 2008 20

Alice Weber

Approved:

Maria Pennullo

THIS CERTIFICATION  
IS VOID  
WITHOUT NYT RAISED SEAL



SEC. C4 PG 16

**CERTIFICATION OF PUBLICATION**

MAY 05 2008 20

I, Alison Weber, in my capacity as a Principal Clerk of the Publisher of The New York Times a daily newspaper of general circulation printed and published in the City, County and State of New York, hereby certify that the advertisement annexed hereto was published in the editions of The New York Times on the following date or dates, to wit on

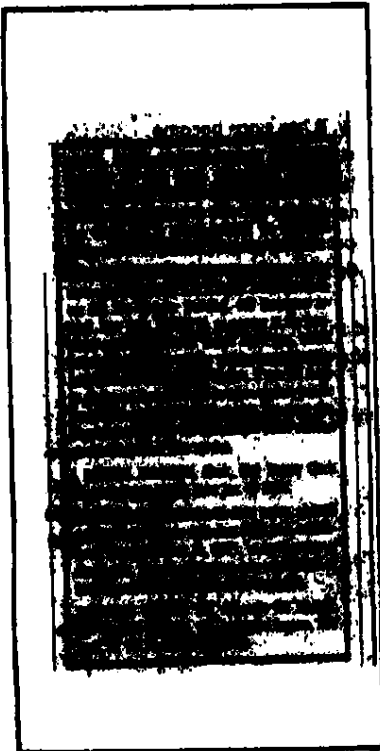
MAY 04 2008 20

Alison Weber

Approved:

Maria Pennullo

THIS CERTIFICATION  
NOT VALID  
WITHOUT NYT RAISED SEAL.



NYT-PR-08



SEC. NS PG 12

**CERTIFICATION OF PUBLICATION**

MAY 05 2008 20\_\_

I, Alice Weber, in my capacity as a Principal Clerk  
of the Publisher of The New York Times a daily newspaper of general  
circulation printed and published in the City, County and State of New  
York, hereby certify that the advertisement annexed hereto was published  
in the editions of The New York Times on the following date or dates,  
to wit on

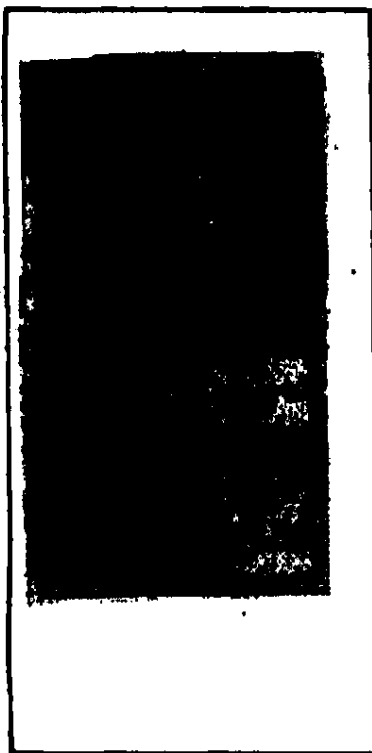
MAY 04 2008 20\_\_

Alice Weber

Approved:

Maria Pennullo

THIS CERTIFICATION  
NOT VALID  
WITHOUT NYT ISSUED SEAL

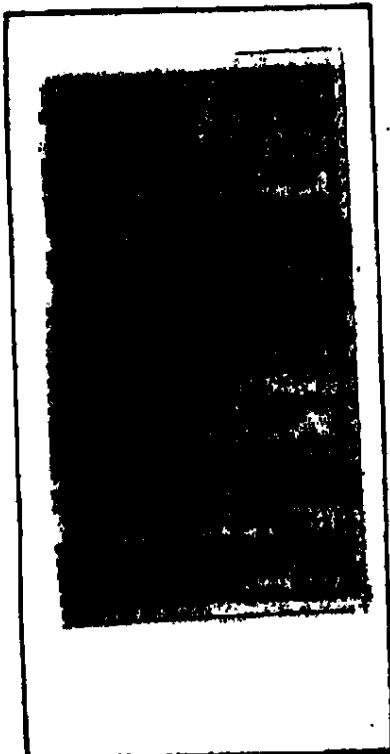


0407-7228 01



SEC. Cy PG. 1

**CERTIFICATION OF PUBLICATION**



6482-728-01

I, Alice Weber, in my capacity as a Principal Clerk  
of the Publisher of The New York Times a daily newspaper of general  
circulation printed and published in the City, County and State of New  
York, hereby certify that the advertisement annexed hereto was published  
in the editions of The New York Times on the following date or dates,  
to wit on

JUN 05 2008 20

MAY 11 2008 20

Approved:

Maria Pannullo

THIS CERTIFICATION  
NOT VALID  
WITHOUT NYT RASING SEAL



**The New York Times**

620 6TH AVENUE • NEW YORK, NY 10018

SEC. NS PG 6

**CERTIFICATION OF PUBLICATION**

JUN 05 2008 20

I, Alice Weber, in my capacity as a Principal Clerk of the Publisher of The New York Times a daily newspaper of general circulation printed and published in the City, County and State of New York, hereby certify that the advertisement annexed hereto was published in the editions of The New York Times on the following date or dates, to wit on

MAY 11 2008 20

Alice Weber

Approved:

Maria Pennullo

THIS CERTIFICATION  
NOT VALID  
WITHOUT NYT RAINBOW SEAL

5400-100 00

# EXHIBIT “E”

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
BHS (NEW YORK) CORPORATION,

Plaintiff,

v.

IBRAHIMA DIENE,

Defendant.  
\_\_\_\_\_

X

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08 Civ. 00179 (LAK)

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**CLERK'S CERTIFICATE**

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I, **J. MICHAEL McMAHON**, Clerk of the United States District Court for the Southern District of New York, do hereby certify that the docket entries in the above-entitled action indicate that a complaint herein was filed and a summons issued on January 9, 2008; that an Order (Kaplan, D.J.) authorizing service of the summons by publication was entered herein on April 3, 2008; that the summons was published in the New York Daily News on April 17, April 24, May 1 and May 8, 2008; and that the summons was published in the New York Times on April 20, April 27, May 4 and May 11, 2008.

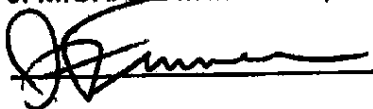
I further certify that the docket entries indicate that defendant has not filed an answer or moved with respect to the complaint herein.

The default of the defendant is hereby noted.

Dated: New York, New York  
June 13, 2008

J. MICHAEL McMAHON, Clerk

By: \_\_\_\_\_



ECF

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:08-cv-00179-LAK**

BHS (New York) Corporation v. Diene  
Assigned to: Judge Lewis A. Kaplan  
Demand: \$509,000  
Cause: 28:1332 Diversity-Fraud

Date Filed: 01/09/2008  
Jury Demand: None  
Nature of Suit: 370 Fraud or Truth-In-Lending  
Jurisdiction: Federal Question

**Plaintiff**

**BHS (New York) Corporation**

represented by **Amos Alter**  
Troutman Sanders LLP(NYC)  
405 Lexington Avenue  
New York, NY 10174  
212-704-6000  
Fax: 212-704-6288  
Email:  
Amos.alter@troutmansanders.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**V.**

**Defendant**

**Ibrahima Diene**

Date Filed	#	Docket Text
01/09/2008	1	COMPLAINT against Ibrahima Diene. (Filing Fee \$ 350.00, Receipt Number 637798) Document filed by BHS (New York) Corporation.(jeh) (Entered: 01/10/2008)
01/09/2008		SUMMONS ISSUED as to Ibrahima Diene. (jeh) (Entered: 01/10/2008)
01/09/2008		Case Designated ECF. (jeh) (Entered: 01/11/2008)
01/09/2008		Magistrate Judge Henry B. Pitman is so designated. (jeh) (Entered: 01/11/2008)
01/09/2008	2	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by BHS (New York) Corporation.(jeh) (jeh). (Entered: 01/11/2008)
01/09/2008		***NOTE TO ATTORNEY TO E-MAIL PDF. Note to Attorney Amos Alter for noncompliance with Section (3) of the S.D.N.Y. 3rd Amended Instructions For

		Filing An Electronic Case or Appeal and Section 1(d) of the S.D.N.Y. Procedures For Electronic Case Filing. E-MAIL the PDF for Document 2 Rule 7.1 Corporate Disclosure Statement to: case_openings@nysd.uscourts.gov. (jeh) (Entered: 01/11/2008)
02/04/2008	<u>3</u>	ORDER that consistent with the law and rules governing the conduct of the US Postal Service, the Postal Service shall advise plaintiff's counsel of any forwarding address left by Ibrahima Diene regarding his former residence at 204 10th Street, Apt 514, Jersey City, NJ 07302. (Signed by Judge Lewis A. Kaplan on 2/4/08) (cd) (Entered: 02/05/2008)
02/07/2008	<u>4</u>	ORDER RE SCHEDULING AND INITIAL PRETRIAL CONFERENCE: Initial Conference set for 2/28/2008 at 10:00 AM in Courtroom 12D, 500 Pearl Street, New York, NY 10007 before Judge Lewis A. Kaplan. (Signed by Judge Lewis A. Kaplan on 2/5/08) (cd) (Entered: 02/07/2008)
02/28/2008		Minute Entry for proceedings held before Judge Lewis A. Kaplan: Interim Pretrial Conference held and concluded on 2/28/2008 with plaintiff's counsel only. (djc) (Entered: 03/13/2008)
03/11/2008	<u>5</u>	DECLARATION of Amos Alter in Support. Document filed by BHS (New York) Corporation. (Attachments: # <u>1</u> Exhibit A - Summons and Complaint, # <u>2</u> Exhibit B - Affidavit of Attempted Service, # <u>3</u> Exhibit C - Order, # <u>4</u> Exhibit D - Letter, # <u>5</u> Exhibit E - Email, # <u>6</u> Text of Proposed Order Proposed Order) (Alter, Amos) (Entered: 03/11/2008)
04/03/2008	<u>6</u>	ORDER that the summons in this action may be served upon defendant by publication pursuant to FRCP Rule 4(e) and New York CPLR 316 as set forth herein. The summons, together with a notice to defendant, containing a brief statement of the nature of the action, and the relief sought, shall be published in two newspapers, at least one in the English language, namely The New York Times, published in New York, New York and the New York Daily News published in New York, New York, both most likely to give notice to defendant, once in each of four successive weeks. The first publication shall be made within thirty days after this Order is granted. (Signed by Judge Lewis A. Kaplan on 4/3/08) (dle) (Entered: 04/03/2008)
05/22/2008	<u>7</u>	SERVICE BY PUBLICATION. A Summons was published in the New York Daily News on 4/17, 4/24, 5/1, 5/8 2008. Document filed by BHS (New York) Corporation. (Alter, Amos) (Entered: 05/22/2008)
06/11/2008	<u>8</u>	SERVICE BY PUBLICATION. A Service by Publication was published in the New York Times on April 20, 27, May 4, 11, 2008. Document filed by BHS (New York) Corporation. (Alter, Amos) (Entered: 06/11/2008)

PACER Service Center			
Transaction Receipt			
06/12/2008 11:23:26			
PACER Login:	ts1665	Client Code:	037492.000002
Description:	Docket Report	Search Criteria:	1:08-cv-00179-LAK

Billable Pages:	2	Cost:	0.16
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